Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1997

YIQUN GUO,

Petitioner,

v.

RYLAND GROUP, INC., et al,

Respondents.

On petitions for a writ of certiorari
To The United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

YIQUN GUO
Pro se
343 West Side Dr. #203
Gaithersburg, MD 20878-3033
301-963-6531 (H)
301-881-8840 ex 3360 (O)

32 pp

QUESTIONS PRESENTED

1. Is summary judgment appropriate where there are complete disputes of all genuine issues as to the material facts?
2. Does a person have the right to state his position in a hearing when he is alleged for poor job performance?
3. Can a court awards a perjury party the costs after the court denied awarding it the attorneys' fees and all the fees and expenses and no appeal is filed?
4. Why a proven and undisputed perjurer is awarded and a victim of the law violation is punished?

LIST OF PARTIES

ARLENE MALECH, Respondent who has same counsel as Ryland Group, Inc.

DOUGLAS TOWNSEND, Respondent who has same counsel as Ryland Group, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, the plaintiff in the original case, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, which is far departed from the accepted and usual course of judicial proceedings.

OPINIONS BELOW

"I am not unsympathetic to defendant's position. However, I am not prepared to say that plaintiff's Title VII claim was so frivolous, vexatious or groundless or that it is so clear that plaintiff's motives in litigating the case were purely vindictive that I should take the extraordinary step of imposing attorneys' fees and expenses upon him. Accordingly, defendant's motion is denied", May 8, 1996, by Judge Motz, U.S. District Court, MD, herein after District Court.

"Costs are hereby awarded in favor of defendant and against plaintiff in the amount of $3,546.80", April 1, 1997, by Gary M. Sapperstein, clerk of District Court.

"Find no reversible error... affirm on the reasoning of the district court... Res judicata is inapplicable to the bill of costs award because the prior denial of attorneys' fees decided a separate issue and did not implicate the bill of costs", U.S. Court of Appeals for the Fourth Circuit, herein after 4th Circuit Court.

"The court denies the petition for rehearing and suggestion for rehearing in banc as untimely filed", 4th Circuit Court.

"The court denies appellant's motions", 4th Circuit Court.

JURISDICTION

The date on which the U.S. 4th Circuit Court decided this case was August 25, 1997. A timely petition for rehearing was denied by 4th Circuit Court on September 11, 1997, and a copy of the order denying rehearing appears at Appendix F. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rules of the Supreme Court of the United States: Rule 10. Considerations Governing Review on Certiorari

(a) a United States court of appeals ... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Title 28 Judiciary and Judicial Procedure, § 1920. Taxation of costs

...

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

Local Rules and Internal Operation Procedures of the Fourth Circuit: Local Rule 39 (c). Recovery of Costs in the District Court.

.....

Various costs incidental to an appeal must be settled at district court level... Application for recovery of these expenses by the successful party on appeal must be made in the district court...

Anderson v. Liberty Lobby, Inc., 477 U.S. 248-249 (1986):

To defeat a motion for summary judgment, the non-moving party must show that there is a dispute over facts that are material to the outcome of the case.

STATEMENT OF THE CASE

There is a related petition that had been filed in this honorable court on April 21, 1997, case No. 97-199. The court can review the first petition for more detailed background information.

Petitioner, an Asian born in China, was hired by respondent, Ryland Group, Inc., on Sept. 21, 1992, as a Programmer Analyst/Support Marketing Research. Petitioner got very good new employee appraisal. His manager states "performance is excellent".

In late January, 1993, Arlene Malech was hired by Ryland and soon became the Director of Customer Satisfaction Programs. Petitioner was the only one providing statistics and programming service for her marketing research needs. Although Arlene Malech often created difficulties in petitioner's work and often screamed at petitioner, there is no dispute that petitioner provided excellent service to her.

On May 10 Douglas Townsend, petitioner's second level manager, forced petitioner to report to Arlene Malech in spite of petitioner explained once again that he had hard time to work for her. In order to terminate petitioner, Douglas Townsend told petitioner that his job was closed and he was doing "new" job for Arlene Malech. Knowing Ryland always gave several months to the employees whose jobs were closed to look for new jobs, Douglas Townsend did not give petitioner this option even if petitioner did not want to report to Arlene Malech.

The "new" job was the exact the same as petitioner's old job. In spite that petitioner tried his best to meet her ridiculous demands even voluntarily worked in evenings and on holiday, Ms. Malech was still not satisfied. She tried her best to create most difficult working environment to petitioner. She constantly changed her requests and complained petitioner delayed projects. She gave petitioner unrealistic deadlines and forced petitioner to provide the results every day. She ordered petitioner not to work on other's project and complained petitioner delayed other's project. She more often screamed at petitioner and intentionally insulted petitioner in

public. As soon as she knew petitioner would report to her, Arlene Malech started to prepare the materials for terminating petitioner even **before** petitioner formally reported to her.

On June 4, 1993, after 3 weeks petitioner reported to Arlene Malech, Douglas Townsend informed petitioner that he was terminated. Douglas Townsend showed him a memo about petitioner's job performance prepared by Arlene Malech and forced him to leave in fifteen minutes. All the job type information stated in the memo against petitioner fall within the job description for which petitioner was originally hired. Petitioner was not allowed to explain any of the allegations. In Ryland 26 years history and over 30,000 employees, no one received the similar treatments.

On June 14, 1993, petitioner sent a letter to Roger Schipke, then CEO of Ryland, and Douglas Townsend separately. In the letter petitioner denied every allegation from Arlene Malech and requested respondent to correct the errors. Respondent never responses to it. Petitioner, therefore, filed a complaint in the Office of Human Rights, Howard County (OHRHC).

On September 29, 1993, Robert Coggins, the investigator from OHRHC met with petitioner after received respondent's overdue response. Mr. Coggins told petitioner that there was not doubt that he was a good employee and Arlene Malech was a bad manager. He then started the investigation. No hearing was made. The findings prepared by the same person, however, conclude that there is no reasonable cause and allegedly found that petitioner "disagreed and argued with Ms. Malech", which does not even show in above allegations prepared by Arlene Malech. The findings are legally expired according to Howard County Code.

On July 31, 1994, petitioner filed the appeal to Howard County Human Rights Commission and was denied for no specific reason.

On Nov. 21, 1994, petitioner filed appeal to EEOC, Baltimore Division, and was denied for no specific reason.

On May 2, 1995, petitioner filed Complaint for Relief from Employment Discrimination in U.S. District Court, MD.

On November 30, 1995, respondent filed a motion for summary judgment (hereinafter Sum Motion). Petitioner filed a timely Opposition to it and attached a Affidavit which clearly indicates a major material dispute that the alleged two jobs were "substantially the same". Without a hearing, judge Motz, District Court, issued the order granting respondent's Sum Motion against petitioner.

After respondent knew that petitioner would appeal the case, it filed a bill of costs on March 15, 1996, in district court to threaten petitioner from appeal. The district court did not grant respondent the costs.

After petitioner filed the notice to appeal from district court to 4th circuit court, respondent filed a motion for attorney fees and "all fees and the expenses" in district court to further threaten petitioner from appealing. Appendix H. Petitioner filed the opposition to the motion in district court and attached a copy of his brief for the 4th circuit court which, supported by overwhelmingly undisputed evidence, refutes all the reasons given by district court granting Sum Motion. Judge Motz was unable to refute any of petitioner's argument and, therefore, had to completely deny respondent's motion for attorney fees. Appendix C.

After petitioner filed timely brief to the 4th Circuit Court, on December 2, 1996, the panel in 4th Circuit Court issued unpublished opinions that do not point out any petitioner's argument is wrong and affirm District Court's decision without a hearing.

After 4th circuit issued unpublished opinions, petitioner filed timely petition for rehearing and rehearing in banc but was denied again for no specific reason.

After petitioner notified Ryland that he would appeal the case to the U.S. Supreme Court, on April 1, 1997, the clerk of district court filed an order charging petitioner over $3,500 costs. The order is based on the judge's order that granted respondent's Sum Motion, which had been issued more than one year ago.

Petitioner filed a timely motion for reconsideration which proves that the attorney fees and all fees and the expenses, which includes costs, were completely denied by the court before and respondent did not even file an appeal. Petitioner further proved that respondent won the case was essentially based on its perjury by providing false deposition material and false job description to the district court. Judge Motz wrote only one word, "Denied", on petitioner's motion on the same day he received the motion without even waiting for respondent's response.

Petitioner filed another appeal to 4th circuit (case # 97-1617) and was denied again by Judge K. K. Hall, Judge William Wilkins, and Judge Clyde Hamilton, the same panel who denied petitioner's first appeal. Appendix A. They declare that attorney fees do not include costs. They chose not to mention that all the expenses had been denied before. They chose not to mention that respondent won the case was essentially based on its perjury that respondent did not even deny it.

Petitioner filed another timely petition for rehearing and rehearing in banc but was denied by the 4th circuit court alleging that he was untimely. Appendix F. Petitioner filed another motion for reconsideration, which lists all the laws and proves he was timely (14 days plus 3 days served by mail). Appendix I. but was denied again for no reason. Appendix E. The judges are against law by depriving petitioner's legal right for further petition for rehearing.

REASONS FOR GRANTING THE PETITION

A. This Case Was Determined by Complete Errors

Petitioner, an excellent employee, received slave-like working condition in Ryland. On his arriving Marketing Group, his welcoming memo was canceled while all other people there got welcoming memo. He was forced to report to a bad manager. He was constantly screamed by Ms. Malech and was insulted in public. He was imposed unrealistic deadline. He was alleged that he did poor job performance and was not allowed to explain. He was force to leave in fifteen minutes and was escorted out of the office. He was not placed in a probation. After he filed a complaint in the OHRHC, he was further defamed. Petitioner has spent more than 4 years and cost more than $53,000 in this case but has NEVER get a single hearing in this 100 percent disputed case. Because respondent committed perjury, petitioner did not receive any relief from respondent's unlawful employment practice. Rather, he further greatly suffered from financial loss and back pain. He is receiving medical treatments three times a week and can not get any improvement because he is still suffering from greatly mental damages.

It is clear that this case was determined by complete errors. The major argument that respondent gave in this case is that petitioner's original job in Ryland was closed and he was given a "new" job by Ms. Malech. Based on this argument, respondent argues that petitioner was terminated because he was not qualified for the "new" job, and that there is no reasonable cause of discrimination because same person hired and filed petitioner. The District Court also concluded that that the same person hired and filed petitioner "gives rise to the inference of a lack of unlawful discrimination" and made it as the number 1 reason listed. Clearly whether the alleged two jobs are the same is a genuine issue as to a material fact which will strongly influence to the outcome of the case. Petitioner has submitted an affidavit to the District Court which states that the alleged two jobs were "substantially the same". By law and the common judicial practice, the courts should have

denied respondent's Sum Motion simply by petitioner's affidavit. Federal Rules of Civil Procedure: Rule 56 (c); Anderson v. Liberty Lobby, Inc., 477 U.S. 248-249 (1986).

The important is not only this case was entered by complete errors but also the way this case had been carrying out. As presented in the Statement of the Case, this case has never been heard for the whole course from Ryland, OHRHC to 4th Circuit Court. Clearly it is unjustified. It is the fundamental for a legal system that a person shall have the right to state his position in a hearing when there is a dispute on material fact. It is the basic human rights that a person shall have the right to state his position in a hearing when he is alleged for poor job performance.

B. 28 U. S. C. § 1920 Requires That Costs to Be Included in the Judgment If It Is Granted But the Costs Are Not Included in the Judgment

28 U. S. C. § 1920 clearly states that, "A bill of costs shall be ..., upon allowance, included in the judgment or decree." The fact is that District Court judgment granting respondent's Sum Motion on February 26, 1996, does not include the costs. Appendix D. Respondent is well aware the law and the fact that the costs were no included in the order. It, therefore, explicitly requested that, "costs ..., pursuant to 28 U. S. C. § 1920, be included in the Judgment" in its Memo in Support of Bill of Costs after the issuance of the Judgment. It is undisputed that District Court judgment granting respondent's Sum Motion does not include the costs.

C. It Is the Common Knowledge That Expenses Include Costs in Judicial Practice And the Expenses Had Been Clearly Denied by the Same District Court

It is the common knowledge that expenses include costs in judicial practice. Local Rule 39 (c) also uses the expenses to define costs. See Constitutional and Statutory Provisions Involved Section. The Order issued by the District Court clerk on April 1, 1997, which awarded respondent the costs, clearly states, "because each item of expense may be recovered under 28 U. S. C. § 1920, the undersigned

shall tax all expenses ...", the second paragraph, Appendix B, emphasize added. Here, the court clearly defines the costs as EXPENSE(S). The Attachment 1 in respondent's Bill of Costs is the Affidavit of Sonya K. Hannan, the very same person who prepared respondent's Informal Brief to the 4th circuit court. The Affidavit also clearly states, "I hereby verify that the foregoing expenses are correct". Here, respondent clearly defines its costs as EXPENSES. Respondent should not have any difficult to understand its own written language.

It is undisputed that all fees and the expenses had been clearly denied by the same District Court. In the first paragraph, its Motion for Attorneys' Fees (Appendix H) filed in the District Court, respondent explicitly indicates that the motion is for attorneys' fees and "all fees and expenses incurred by Ryland". In his order issued on May 8, 1996, Judge Mots states that he does not want to "take the extraordinary step of imposing attorney's fees and expenses" upon petitioner, the second paragraph, Appendix C. Respondent never file any appeal against this order. It, therefore, has completely lost its rights to recover all fees and the expenses. On April 1, 1997, before petitioner submitted his first petition to this Court, however, court clerk re-raised this already resolved and undisputed issue and tried to charge petitioner the costs second time. Note that it was after more than one year from the date Sum Motion was granted, and after petitioner reminded respondent that he would file an appeal to U. S. Supreme Court, explore this case to news media and continue to work on this case until justice is made. Clearly, the only purpose to impose costs against petitioner is threatening petitioner from appealing the case to the Supreme Court. Under the rule of **res judicata**, the re-assignment of the costs shall be barred.

D. That Respondent Won it's Motion for Summary Judgment, Which Is the Basis That It Claims the Costs, Is Essentially Based on Its Perjury Activities

There are two major arguments presented by respondent and those two arguments are totally supported by false materials sent by respondent to the District Court.

Respondent alleges that petitioner's original job was closed and he was given a "new" job. To allege that petitioner's "two" jobs were different, respondent presented a Programmer Analyst job description as Exhibit 4 in its Sum Motion filed in the District Court. In his deposition, petitioner has testified under oath that he "never got a job description" when he got the job in Ryland. No one has testified that petitioner was hired as Programmer Analyst described by respondent's job description. Respondent is unable to refute petitioner's testimony but still provides this false job description to the court and uses it to support its major argument.

Respondent also alleges that petitioner admits that he did not meet Arlene Malech's expectation. To prove its allegation, respondent cites false deposition in its Sum Motion, which had been corrected by petitioner. Respondent received petitioner's errata sheets and refuses to use the correction because respondent is too poor to make arguments. In respondent's Motion for Attorneys' fees, respondent still uses this false deposition. Respondent knows that, pursuant to Fed. R. Civ. P. 30 (e), it is required to use corrected deposition but does not tell the court that this line had been corrected and still repeatedly uses it to support its major argument. Respondent has seriously violated the law.

In fact, respondent can not and NEVER deny its perjury activities but still refuses to remove those false documents. Based on those false documents, the District Court wrongly concluded that the alleged two jobs were "substantially different", that same person hired and filed petitioner, and that petitioner was terminated for cause. Based on those wrong conclusion, the District Court wrongly granted respondent's Sum Motion, which is the basis that respondent claims that it is entitled for the costs. If the District Court could overturn its order, the order to be overturned should have been the one granting Sum Motion rather than the one denying respondent's motion for attorneys' fees and the expenses.

E. What Is the Unusual Relation between Respondent and the Judges

It is undisputed that the District Court wrongly granted respondent's Sum Motion and wrongly charged petitioner the costs second time. The question is why this far departure from the usual course of judicial proceedings can by pass both district court and 4th circuit court. What is the unusual relationship between respondent and the judges? Why not the judges charge the proven and undisputed perjurers? Rather, they consistently help respondent to escape from this lawsuit, and threaten and retaliate against petitioner. By the manner that he overturns his own order, the court can easily tell what attitude judge Motz has against petitioner. He wrote only one word, "Denied", on petitioner's motion for reconsideration on the same day he received the motion without even waiting for respondent's response. He is trying to tell petitioner that he has the power to do whatever he wants, regardless the facts and the justice.

From the way the panel in the 4th circuit court affirming the district court ridiculous orders and denying petitioner's petition for rehearing and rehearing in banc, the court can also tell what attitude the judges have against petitioner. In his first brief to the 4th circuit court, petitioner clearly presented 100 percent disputes on district court's reasoning to grant respondent's Sum Motion without even a hearing and clearly proved that all the major witnesses have committed perjury. Why does the panel still affirm this order, which is far departed from the accepted and usual course of judicial proceedings? In his second brief to the 4th circuit court, petitioner clearly proved that both attorney fees and the expenses were denied by the district court before and respondent did not even file an appeal. Petitioner further proved again that respondent won the case was essentially based on its perjury. But the panel still affirm the district court order and chose not to mention that the expenses were denied and that respondent won the case was essentially based on its perjury which respondent did not even deny it. Why?!

Petitioner filed another timely petition for rehearing and rehearing in banc but was denied by the 4th circuit court alleging that he was untimely. Appendix F. Petitioner filed another motion for reconsideration, which lists all the laws and proves he was timely (14 days plus 3 days served by mail). Appendix I. But it was denied by the panel again for no reason. Appendix E. The judges are against law by depriving petitioner's legal right for further petition for rehearing. Why?!!

F. It Is the Time for This Honorable Supreme Court to Exercise Its Supervisory Power to Stop the Illegal Activities

As fully proven in petitioner's brief in his first appeal to 4th circuit court, all the major witnesses have committed perjury. Respondent has also committed perjury by knowingly providing false job description and false deposition material to the courts. Clearly, the one shall be punished is the perjurer rather than the innocent. Why the result is just the opposite?

On October 29, 1997, while Chinese President Jiang Zeming was visiting White House, petitioner went there to protest the extremely poor human rights he has experienced and the retaliation he is facing. Although no report has published, he has drawn public attention to this case. Petitioner respectfully re-requests this honorable court to make serious consideration on the outcome of this case. How much those honest American people will be hurt by hearing that a perjurer is awarded and the victim of the law violation is punished? Although petitioner is pro se, it does not mean that he is no serious about this case. He is trying to hire a attorney and this attorney is not available because the family difficulty. With the coming deadline, petitioner has to be pro se again. Petitioner respectfully requests the court excuse him if this petition has any difficulty to understand in language.

The purpose of this petition is not for several thousand dollars, but for the dignity of the law. Life can be taken but justice can NOT be sullied. This case is not simply some unfair treatments against petitioner nor simply some errors in application of laws. Rather it is

whether everyone is the same in front of a law. Petitioner is suffering from a serious discrimination with serious defamation and was refused by all the legal channels without a hearing. Further, he is still facing more retaliation. Petitioner, therefore, strongly urge this Honorable Supreme Court to exercise its supervisory power to stop and to punish those illegal activities, as stated in Rules 10 (a) of the Supreme Court of the United States because the district court judge and the panel in 4th circuit court "has so far departed from the accepted and usual course of judicial proceedings".

CONCLUSION

For the reasons stated above, petitioner strongly urge this Honorable Supreme Court to have a review of this case, for the human rights, for the dignity of the law, and for the well-being of the country.

HELP! SAVE THE JUSTICE!

Respectfully Submitted,

Yiqun Guo
343 West Side Dr. #203
Gaithersburg, MD 20878-3033
Petitioner - pro se

Appendix A

APPENDIX A.-- Unpublished Opinions of the U.S. Fourth Circuit Court
Filed August 25, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-1617

YIQUN GUO, Plaintiff - Appellant,
versus

THE RYLAND GROUP, INCORPORATED, Defendant - Appellee,
and
ARLENE MALECH; DOUGLAS TOWNSEND, Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Chief District Judge. (CA-95-1319-JFM)

Submitted: August 5, 1997 Decided: August 25, 1997

Before HALL, WILKINS, and HAMILTON, Circuit Judges.

Affirmed by unpublished per Curium opinion.

Yiqun Guo, Appellant, Pro se. Richard J. Hafets, Eric Paltell, PIPER & MARBURY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appendix A

Appellant, Yiqun Guo, appeals the district court's orders awarding costs to the Defendant Ryland Group and denying Guo's motion for reconsideration of the order. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Guo v. Ryland Group, Inc., No. CA-95-1319-JFM (D. Md. Apr. 2, 1997; April 15, 1997). We find that the district court properly denied Guo's motion for reconsideration because the clerk's order awarding costs to Ryland Group was not barred by res judicata. Res judicata is inapplicable to the bill of costs award because the prior denial of attorneys' fees decided a separate issue and did not implicate the bill of costs. We deny Ryland's motion to dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B. -- the Order of the U.S. District Court, Maryland Filed April 1, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Civil No. JFM-95-1319

YIQUN GUO
v.
RYLAND GROUP, INC.

ORDER

On February 26, 1996 summary judgment was entered in favor of defendant and against plaintiff. (See Paper No. 28).[1] on March 15, 1996 counsel for defendant filed a timely Bill of Costs pursuant to Fed. R. Civ. P. 54(d)(1) and 28 U.S.C. § 1920, seeking the amount of $3,546.80 for costs associated with witness fees; deposition transcripts used to support the successful summary judgment motion; docketing fees; and copywork for motions filed with the Court. (Paper No. 31).

Plaintiff has not objected to said taxation request. Therefore, because each item of expense may be recovered under 28 U.S.C. §1920, the undersigned shall tax all expenses set out herein as unopposed. See Local Rule 109.1.c. (D.Md.).

Accordingly, costs are hereby awarded in favor of defendant and against plaintiff in the amount of $3,546.80. The Clerk of Court shall docket and mail copies of this Order to all counsel in this case.

---

[1] Judgment was not reversed on appeal, and plaintiff's petition for rehearing in banc was denied. See Paper No. 42.

Dated this 1st day of April, 1997.

s/ Gary M. Sapperstein
Gary M. Sapperstein, Chief Deputy Clerk

APPENDIX C. – the Order and the Memorandum of the U.S. District Court, Maryland
Filed February 26, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Civil No. JFM-95-1319

YIQUN GUO
v.
RYLAND GROUP, INC.

ORDER

As stated in the memorandum to Mr. Guo and Mr. Hafets being entered herewith, it is, this 8th day of May, 1996,

ORDERED that defendant's motion for attorneys' fees be denied.

s/ J. Frederick Motz
J. Frederick Motz
United States District Judge

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-0782
FTS 922-0782

May 8, 1996

MEMO TO PARTIES RE: Yiqun Guo v. Ryland Group, Inc.
Civil No. JFM-95-1319

Dear Mr. Guo and Mr. Hafets:

I have reviewed the papers submitted in connection with defendant's motion for attorneys' fees.

I am not unsympathetic to defendants' position. However, I am not prepared to say that plaintiff's Title VII claim was so frivolous, vexatious or groundless or that it is so clear that plaintiff's motives in litigating the case were purely vindictive that I should take the extraordinary step of imposing attorneys' fees and expenses upon him. Accordingly, defendant's motion is denied.

Despite the informal nature of this ruling, it shall constitute an Order of Court, and the Clerk is directed to docket it accordingly.

Very truly yours,
s/ J. Frederick Motz
J. Frederick Motz
United States District Judge
Cc: court file

Appendix D

APPENDIX D. -- the Order of the U.S. District Court, Maryland Filed February 26, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Civil No. JFM-95-1319

YIQUN GUO
v.
RYLAND GROUP, INC.

ORDER

For the reasons stated in the memorandum entered herewith, it is, this 26th day of February, 1996,

ORDERED:

1. Defendant's motion for summary judgment is granted; and
2. Judgment is entered in favor of defendant against plaintiff.

s/ J. Frederick Motz
J. Frederick Motz
United States District Judge

Appendix E

APPENDIX E. -- Order of U.S. Fourth Circuit Court Filed October 20, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 20, 1997

No. 97-1617
CA-95-1319-JFM

YIQUN GUO
Plaintiff - Appellant

v.
THE RYLAND GROUP, INCORPORATED
Defendant - Appellee

and
ARLENE MALECH; DOUGLAS TOWNSEND
Defendants

ORDER

The appellant has filed a motion for reconsideration and a motion to correct error and to vacate mandate.

The court denies appellant's motions.

For the Court,
/s/ Patricia S. Connor
CLERK

Appendix F

APPENDIX F. – Order of U.S. Fourth Circuit Court Filed September 11, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 11, 1997

No. 97-1617
CA-95-1319-JFM

YIQUN GUO
Plaintiff - Appellant

v.
THE RYLAND GROUP, INCORPORATED
Defendant - Appellee

and
ARLENE MALECH; DOUGLAS TOWNSEND
Defendants

ORDER

Appellant has filed an untimely petition for rehearing and suggestion for rehearing in banc. This Court strictly enforces the time limits for filing petitions for rehearing and suggestions for rehearing in banc.

The Court denies the petition for rehearing and suggestion for rehearing in banc as untimely filed.

For the Court – By Direction

/s/ Patricia S. Connor
CLERK

APPENDIX G. – Mandate of U.S. Fourth Circuit Court Filed September 16, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH. CIRCUIT

FILED
September 16, 1997

No. 97-1617
CA- 95 -1319 -JFM

Guo v. Ryland Group

MANDATE

The judgment of this Court dated 8/25/97 takes effect today.

PATRICIA S. CONNOR
CLERK

Appendix H

APPENDIX H. – Respondent's Motion for Attorney Fees in U.S. District Court, Maryland Filed December 13, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

YIQUN GUO,
Plaintiff,
v. Case No. JFM-95-1319
RYLAND GROUP, INC.,
Defendant.

DEFENDANT'S MOTION FOR ATTORNEYS' FEES

Defendant Ryland Group, Inc. ("Ryland"), by and through its undersigned counsel, respectfully moves this Court to award it the attorneys' fees and expenses that it has incurred in this action, including all fees and expenses incurred by Ryland in defending Arlene Malech and Douglas Townsend in this action, and as grounds, defendant states as follows:

1. On May 3, 1995, plaintiff Yiqun Guo filed suit against Ryland and two Ryland supervisors, Arlene Malech and Doug Townsend, alleging that he had been transferred and subsequently terminated from his employment because of his race (Asian) and national origin (Chinese) in violation of Title VII of the Civil Rights Act of 1964.

2. On July 25, 1995, this Court granted defendants Malech and Townsend's Motion to Dismiss, leaving Ryland as the only defendant in this action.

3. By an Order and Judgment dated February 26, 1996, this Court granted defendant's Motion for Summary Judgment in its entirety and entered judgment in favor of Ryland.

4. Under Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), this Court is authorized to award attorneys' fees and expenses to a party prevailing on claims brought under Title VII. Ryland, Malech and Townsend are the prevailing parties and are entitled to an award of attorneys' fees because plaintiffs Title VII claim was frivolous, vexatious, and groundless, and because plaintiff s motives in litigating this case were purely vindictive.

5. Although under Local Rule 109.2.b, the molting party is required to submit a statement specifying the attorneys' fees and expenses it has incurred, defendant respectfully requests that this requirement be waived until this Court enters an Order awarding defendant attorneys' fees or until this Court directs defendant to submit the statement of fees and expenses. At such time, defendant will provide a detailed description of work performed specifying the amount of time expended on each task, the attorneys' customary fee for such like work, and a listing of expenditures for which reimbursement is sought.

WHEREFORE, for the above reasons and the reasons stated in defendant's Memorandum in support of its Motion for Attorneys' Fees attached hereto, Ryland respectfully requests that this Court grant its Motion for Attorneys' Fees and award Ryland the amount of attorneys' fees and expenses that it incurred in this action, including the fees and expenses it incurred on behalf of defendants Malech and Townsend, or an amount deemed appropriate by this Court.

Respectfully submitted,

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APPENDIX I. -- Petitioner's Motion for Reconsideration in U.S. Fourth Circuit Court Filed September 16, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 97-1617
CA-95-1319-JFM

YIQUN GUO, *
Petitioner, *
v. *
RYLAND GROUP, INC., *
Respondent. *
* * * * * * * *

PETITIONER'S MOTION FOR RECONSIDERATION

Pursuant to Federal Rules of Appellate Procedure 27, petitioner, Yiqun Guo, respectfully move this honorable court to reconsider its order issued by court clerk on September 11, 1997, which wrongly determined the time for filing petition for rehearing and suggestions for rehearing in banc.

Pursuant to Fed. R. App. P. 35 (c) and 40 (a), and Local Rule 35 (a) and 40 (c), the time for filing petition for rehearing and suggestions for rehearing in banc is "14 days after the entry of judgment". Pursuant to Fed. R. App. P. 26 (c), "3 calendar days shall be added" since the paper is served by mail and petitioner did not receive it on the same day. Petitioner, therefore, shall have 17 days to file. The court issued the judgment on August 25, 1997. Pursuant to Fed. R. App. P. 26 (a), the day of the issuance is not included. The court received petitioner's petition on September 11, 1997, which is exactly 17 days. The court shall have no difficulty to count following dates, 8/26, 8/27, 8/28, 8/29, 8/30, 8/31, 9/1, 9/2, 9/3, 9/4, 9/5, 9/6, 9/7, 9/8, 9/9, 9/10, and 9/11. Petitioner's petition for

rehearing and suggestions for rehearing in banc, therefore, is filed timely.

THEREFORE, petitioner respectfully requests this honorable court to vacate the order issued by the court clerk on September 11, 1997, and to file petitioner's petition for rehearing and suggestions for rehearing in banc as timely.

Respectfully submitted,

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